IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 17771 of 2006
Date of decision : 10-11-2006

Manish Kumar ... Petitioner

v.

Presiding Officer, Labour Court, Gurgaon and another. ... Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. V.S.Bhardwaj, Advocate,
for the petitioner

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ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 21.12.2005 (Annexure P/1), vide which the Labour Court, Gurgaon, has dismissed his claim statement.

Petitioner-workman on 1.7.1994, joined the services of respondent-department as Mali-cum-Chowkidar. On 28.8.1997, his services were terminated by the department on the ground that the same were no longer required. On termination of his services, the workman served a demand notice upon the department seeking reinstatement with continuity of service and back-wages. On failure of the reconciliation proceedings, the appropriate Government referred the dispute to the Labour Court for adjudication. The workman filed claim statement before the Labour Court taking the plea that his services have been terminated illegally without any notice or payment of any compensation. Upon notice of the claim statement, the department denied the allegations levelled by the workman stating that

the services of the workman were terminated as the same were no longer required and that in lieu of requisite one month's advance notice he was paid a sum of Rs.3097/- through a demand draft . It was pleaded that in case of availability of work in future, the services of the workman would be availed.

In support of their respective case, evidence was led by the parties. Upon appreciation thereof, the learned Labour Court vide the impugned award held that the department had retrenched the services of the workman in accordance with law and after complying with the formalities contained in Section 25-F of the Industrial Disputes Act,1947, (in short, the Act) and accordingly, dismissed the claim statement of the workman with the observation that in case of occurrence of any future vacancy, the case of the workman would be considered for re-employment. Hence, the present writ petition by the workman.

We have heard the learned the learned counsel for the petitioner-workman and have also gone through the paper-book carefully.

Learned counsel for the petitioner-workman has argued that when the petitioner-workman was working with the respondent-department, at that time more than 100 workers were employed, and has developed the argument that Section 25-N of the Act was applicable in the present case and it was obligatory for the respondent-department to give three months' notice as required by Section 25-N of the Act and the non-compliance thereof renders the termination invalid. The contention is meritless. Section 25-N of the Act is placed in Chapter V-B of the Act which according to Section 25-K has an application only to an industrial establishment in which not less than 100 workmen were employed in an average per working day for the preceding 12 months. There is nothing to substantiate the said plea. This plea was also not raised before the Labour Court. Now this plea need not detain us any longer. The infirmity in retrenchment by reference to Section 25-N cannot be ventured to be found out without laying factual foundation attracting application of the provision. It is basically a question of fact. A bare perusal of the claim statement shows that there were no such pleadings before the Labour Court. In the absence of requisite pleadings having been raised and documents having been brought on record of the Labour Court, we are not persuaded to

entertain the plea. Thus, we refrain ourselves to entertain the said plea having been raised for the first time before this Court in proceedings under Article 226 of the Constitution of India.

Clause (b) of Section 25-F of the Act expressly provides for payment of retrenchment compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. In other words, a tender of compensation under Section 25-F of the Act, in order to be valid, should be of precise amount and should be made simultaneously with termination of service. This is a condition precedent to a valid order of retrenchment. In the instant case, perusal of the impugned award shows that demand draft dated 28.8.1997 on account of retrenchment compensation was sent along with retrenchment notice, Exhibit MW-2/1 and the petitioner-workman admitted his signatures in token of receipt of retrenchment notice and demand draft. No suggestion had been put to the management witness to rebut it and further, the petitioner-workman had also not filed any rejoinder to the reply filed by the management taking such plea. This led the learned Labour Court to hold that retrenchment of the petitioner-workman was in accordance with law after complying with the formalities contained in Section 25-F of the Act. Learned counsel for the petitioner-workman has not shown anything to convince us to take any contrary view.

In view of what has been stated above, we find no infirmity or illegality in the findings arrived at by the learned Labour Court. The writ petition being wholly without merit stands dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 10, 2006
JS